



Maurita K. Coley
 Senior Vice President
 Legal Affairs

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May 9, 1994

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, NW
 Washington, D.C. 20554

Re: Ex Parte Meeting
 MM Docket No. 92-266 - Cable
PP Docket No. 93-253 - PCS

Dear Mr. Caton:

On behalf of BET Holdings, Inc. and pursuant to Section 1.1206(a) of the Commission's Rules, this letter will constitute notice that on May 3, 1994, Robert L. Johnson, President and Chief Executive Officer, Debra L. Lee, Esq., Executive Vice President and General Counsel, and Maurita K. Coley, Senior Vice President, Legal Affairs, of BET Holdings, Inc., met with Chairman Reed E. Hundt and Merrill Spiegel, Attorney Advisor General, to discuss outstanding issues in the Commission's "Cable Rate Regulations" and "PCS Competitive Bidding" rulemaking proceedings. BET Holding, Inc.'s views on the substantive issues discussed are indicated in the attached summary. An original and one copy of this letter has been submitted to the Secretary.

Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,


 Maurita K. Coley

Attachment

cc: Chairman Reed E. Hundt - Room 814
 Ms. Merrill Spiegel - Room 814
 Commissioner Andrew Barrett - Room 844
 Byron Marchant, Esq. - Room 844
 William E. Kennard, Esq. - Room 614
 Commissioner James Quello - Room 802
 Brian Fontes, Esq. - Room 802

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Black Entertainment Television.

1232 31st Street, N.W.
 Washington, D.C. 20007
 (202) 337-5260 Fax: (202) 333-8858

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BET HOLDINGS, INC.
CABLE RATE REGULATION OVERVIEW
MM Docket No. 92-266

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

A la Carte

The Commission's rate regulations as they relate to programmers are helpful to the extent that they discourage operators from taking cable networks off a regulated package and transferring them to an unregulated a la carte package. However, further refinement of the regulations is necessary with respect to the provisions for adding channels.

Adding Channels

The current regulations allow a cable operator desiring to add a channel a minuscule per channel adjustment plus a pass through of the external cost and a 7.5% mark-up of the external cost factor. This formula provides virtually no incentive to add low priced cable networks and actually gives operators the incentive to add high priced channels to take advantage of a higher mark-up. Note that a 7.5% mark-up of a cable service, such as BET, priced at \$0.10 is only \$0.0075, which is less than a penny. This result is particularly harmful to minority-targeted services, such as BET, which cannot charge the same rates as high-priced, mass appeal channels. For example, an operator adding BET to a 46 channel system would only be able to realize a profit of \$0.02 per subscriber: \$0.01 per channel adjustment plus a pass through of the cost (\$0.10) plus a \$0.01 mark-up of the cost [$\$0.10 \times .075$ (rounded up)]. The obvious incentive for an operator would be to add a higher priced channel for which a higher mark-up could be recovered.

If the "Adding Channels" provision is to be "program neutral," the formula should be changed from a "cost plus percentage mark-up of cost" to a "cost plus flat number." Otherwise, operators will always choose to add higher priced, mass appeal services.

Minority Channels Feature

The 1992 Cable Act specifically acknowledged the need for diversity in programming and specifically addressed the need to provide minority programming incentives by incorporating the minority leased access channels provision under Section 612(h)(i)(1) and (2) of the Act and Section 76.977 of the Commission's rules. (See attached.) Under this provision, Congress allows cable operators to designate a portion of their mandatory leased access channels for carriage of minority programming.

BET submits that in view of Congress' expressed concern about minority programming, the Commission's regulations should include an additional incentive for operators to add minority-oriented channels to encourage the development of diversity in the availability of programming choices. We propose that in addition to whatever standard mark-up formula the Commission adopts, a "minority channels" feature should be added which would be double the standard mark-up. For example, under the current proposed regulations which provide for a

7.5% mark-up over costs, the Commission should allow a 15% mark-up over cost for adding a minority channel. If a cost plus flat-rate mark-up is adopted, the Commission should double the amount of the flat rate mark-up if the operator adds a minority channel.

Sliding Scale "Kicker" to Encourage Addition of Multiple Channels

In addition to the above, the Commission should give operators an additional incentive to add more channels, based on a sliding scale formula. Again, the rationale for this additional "kicker" is to encourage operators to open up more channels. We submit that encouraging operators to add channels increases opportunities for diversity in program choices for consumers by increasing the likelihood that operators will add minority programming.

EXAMPLE:

For example, an operator which added three (3) channels would get the standard recovery-plus formula; adding six (6) channels would allow recovery of the standard recovery-plus formula, plus an additional add-on, e.g., 10%; addition of nine (9) channels would get the standard recovery-plus, plus a 15% add-on.

If the Commission amended its regulations as we propose, the formula would look like this for an operator adding BET to a 46 channel system:

Per Channel Adjustment Factor from table:	.01	
- plus -		
External Cost Pass Through for BET:	.10	
- plus -		
Program Mark-up:	20%	or \$0.15 (if flat rate)
- plus -		
Minority Channel Mark-Up:	40%	or \$0.30 (if flat rate)

In addition, if the operator added BET along with, for example, 5 other channels, it would get to take an additional 10% of the entire mark-up of all 6 channels as illustrated below:

<u>Number of Channels Added</u>	<u>Additional Mark-Up</u>
0 - 3	0
4 - 6	10%
7+	15%

Using the example set forth above, an operator would get an additional \$0.08 mark-up if it added BET and 5 other channels for a total of 6 channels.

Additional Mark-up for Adding Multiple Channels (10% x 5 channels @ \$0.15)	.05
- plus -	
10% x 1 channel (BET) at \$0.30	<u>.03</u>
Total Additional Mark-up for Adding Multiple Channels	.08

Simulcast of Cable Programming on Regulated and A la Carte Packages

Finally, the Commission may want to consider encouraging cable operators to increase consumer choices by simulcasting programming in both a regulated expanded basic package as well as in an a la carte package option. While such an arrangement would be subject to negotiations between the cable operator and the cable programmer, the Commission's encouragement of this option would assist in its implementation.

BET HOLDINGS, INC.

PCS OVERVIEW

Competitive Bidding

PP Docket No. 93-253

The advent of Personal Communications Services ("PCS") offers unparalleled opportunities for designated entities wishing to participate in the development of emerging technologies. The Commission is in the unique position of establishing a nationwide licensing and service framework that will include a wide variety of diverse individuals and businesses.

- **Set-asides.** Set-aside blocks are critical to designated entity success in the broadband PCS auctions.
- **Bidding Credits.** In addition to set-aside blocks for broadband PCS, the Commission should offer significant bidding credits to designated entities. Due to the highly competitive nature of the auctions and the considerable costs of constructing to the Commission's build-out requirements, a significant bidding credit is necessary to support and encourage designated entity participation.
- **Installment Payments.** The Commission should permit all designated entities, not just small businesses, to defer payments for their licenses through installment payment plans.
- **Tax Certificates.** The availability of tax certificates is important to designated entity participation in broadband PCS. Tax certificates will permit designated entities to attract needed capital. Tax certificates should be made available when an auction winner sells a license to a designated entity and when a designated entity sells a minority interest to a non-controlling investor.
- **Preference Eligibility.** The Commission's definitions of control for minority based preferences are overly restrictive. De facto control in the designated entity is sufficient, regardless of whether the 50.1% equity ownership requirement is met. Permitting designated entity control in the operation of PCS systems will satisfy Congress' intent to encourage designated entity participation.
- **Application of Commission's Preferences.** The preferences afforded to designated entities should not be limited solely to smaller license blocks or a single form of preference, such as a bidding credit.

finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

"(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

"(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

"(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

"(g) Notwithstanding sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.

"(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. *This subsection*

shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection."

"(2) For purposes of this subsection, the term 'qualified minority programming source' means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term 'minority' is defined in section 309(i)(3)(C)(ii).

"(3) For purposes of this subsection, the term 'qualified educational programming source' means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

"(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615."

"(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1)."

"OWNERSHIP RESTRICTIONS

"SEC. 613. (a) (1) It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system.

"(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

"(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

"(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming."

(g) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. § 532 or §§ 76.970 and 76.971, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(h) During the pendency of a dispute, a party seeking to lease channel capacity for commercial purposes, shall comply with the rates, terms and conditions prescribed by the cable operator, subject to refund or other appropriate remedy.

§ 76.977 Minority and educational programming used in lieu of deregulated commercial leased access capacity.

(a) A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. § 532, may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this Section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. § 532.

(b) For purposes of this section, a qualified minority programming source is a programming source that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned.

(c) For purposes of this section, a qualified educational programming source is a programming source that devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, or the arts and has a documented annual expenditure on programming exceeding \$15 million. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(d) For purposes of paragraphs (b) and (c) of this section, "substantially all" means that 90% or more of the programming offered must be devoted to minority or educational purposes, as defined in paragraphs (b) and (c) of this section, respectively.

(e) For purposes of subsection (b), "minority" is defined as in 47 U.S.C. 309(i)(3)(c)(ii) to include Blacks, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders.